

IN THE INCOME TAX APPELLATE TRIBUNAL

PANAJI BENCH : PANAJI

(THROUGH VIRTUAL HEARING)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND

SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA.No.383/PAN./2017
Assessment Year 2010-2011

The Income Tax Officer, Ward – 2 (3), 2 nd Floor, Khimjibhai Commercial Complex, Opp. Civil Hospital, Dr. Ambedkar Road, Belagavi.	vs.	Shri Rafiq M. Patwegar, Prop. Yaseen Minerals, At/Post : Londa, TQ. Khanapur Dist. Belagavi. PAN ASMPP6672M
(Appellant)		(Respondent)

For Revenue :	Shri N. Shrikanth
For Assessee :	-None-

Date of Hearing :	07.08.2023
Date of Pronouncement :	09.08.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for A.Y. 2010-2011, arises against the CIT(A), Belagavi's order in case no.ITA.No.44/BGM/2013-14, dated 16.10.2017, involving proceedings u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short "the Act").

Case called twice. None appears at assessee's behest. He is accordingly proceeded ex-parte.

2. The Revenue pleads the following substantive grounds in the instant appeal :

- 1) *"The Id. CIT(A) has erred in not appreciating the fact that during the course of assessment proceedings, the assessee was given as much as eight opportunities to file the details like books of accounts, vouchers, confirmations from the sundry creditors, etc. In spite of sufficient opportunities, the assessee failed to produce any creditors before the Assessing Officer for examination but also failed to produce any confirmations from the creditors.*
- 2) *The Id. CIT(A) erred in not appreciating the fact that the AO has added sundry creditors towards purchases as unproved to the extent of Rs.1,89,08,782/- as the nature of business is trading in iron ore which is not available in market freely and if that be the case, the Id. CIT(A) ought to have considered that there cannot be any URD Creditors.*
- 3) *The Id.CIT(A) has also erred in not appreciating the fact that it is well settled that in order to discharge the onus, the assessee must provide – (i) the identity of the creditor; (ii) the capacity of the creditor to advance money and (iii) the genuineness of the transaction. Only after the assessee has adduced the evidence to establish prima facie the aforesaid, the onus shifts to the department.*
- 4) *The Id. CIT(A) failed to appreciate the fact that the assessee failed to discharge his onus of proving the creditors.*

5) For these and other grounds that may be adduced at the time of hearing, the order of the Id. CIT(A) may be set aside and the order of the Assessing Officer may be restored.”

3. Mr. Shrikanth next invited our attention to the CIT(A)'s detailed discussion deleting sundry creditors addition of Rs.1,89,08,782/- representing assessee's alleged purchases as under :

5. The facts of the case, submissions made by the appellant, grounds of appeal, assessment order are carefully analyzed.

6. In this case the survey u/s.133A of the I. T. Act, 1961 took place on 21/04/2011. During the course of enquiry, it was gathered that the assessee has made huge investments in trucks, in construction of residential house and in purchase of two JCB. It was also gathered that he was maintaining bank accounts in syndicate Bank, Ramnagar, Saraswat Co op Bank, Tilakwadi and Canara Bank, Londa in his own name, proprietor's name and in the name of his family members. The assessee has not file the return of income for the A.Y.2007-08, 2009-10 and 2010-11. Assessee filed return of income only for A.Y.2008-09. But the assessee has not disclosed his investments made in purchase of trucks, JCB and construction of residential house in the return of income. Assessee further explained that he has not accounted these turnover since he has not filed his return of income for these periods.

6.1 During the Assessment Proceedings assessee did not appear on various notices and a proposal to complete the Assessment ex-party u/s.144 was made by the A.O. Then assessee appeared and furnished certain documents such as, Profit and Loss account, Balance sheet, Depreciation schedule for the year ending 31/03/2010, Sundry Creditors list, Ledger extract from Shradha Ispat Pvt. Ltd., Sale Invoices, Kotak Mahindra loan statement, L & T Finance loan statement, Sundaram Finance Statement, Syndicate Bank Statement, Saraswat Co op Bank Account statement and Truck purchase invoices. However Assessment was completed making various additions in the absence of bills, vouchers etc. and in the absence of audited accounts. The A.O has taken a stand going by a statement filed by assessee and disallowed various expenses.

6.2 On the basis of total credits made in the accounts maintained in the various banks, the total turnover year wise given below:

Sl. No.	Asst. Year	Amount credited in Bank account	Total Turnover
1	2008-09	Rs.25,74,964/-	44,22,757
2	2009-10	Rs.5,02,21,819/-	5,58,20,565
3	2010-11	Rs.9,28,32,766/-	8,73,11,368
4	2011-12	Rs.3,36,15,122/-	4,17,01,426

7. Disallowance of sundry creditors of Rs.1,89,08,782/-

A.O disallowed the complete list of sundry creditors as not genuine. The A.O took turnover as stated by the assessee and accepted the profit. One way accepting the turnover and profit shown by the assessee and other way rejecting the total sundry creditors by the A.O is unreasonable. During the year total turnover is shown @Rs.8,73,11,368/-. A.O did not question the nature of business. A.O also accepted the statement filed during the Assessment proceedings. without incurring expenses Business can not be carried out. Disallowing total list of sundry creditors without any investigation/evidence is incorrect. Alternatively I feel in these facts and circumstances, the income of the assessee should have been estimated by the A.O in the absence of related books of account, bills, vouchers

etc: Considering the facts in totality rejecting sundry creditors list in full do not appear to be reasonable and the addition made by the A.O is deleted.

4. Mr. Shrikanth vehemently argued during the course of hearing that the Assessing Officer had rightly disallowed the assessee's claim regarding sundry creditors of Rs.1,89,08,782/- in issue. He could hardly dispute the clinching fact as recorded by the learned CIT(A) that the Assessing Officer had not disputed either the assessee's turnover in regular business activity or the profits declared in the corresponding books of account. Faced with this peculiar situation wherein the learned Assessing Officer's foregoing action appears to be mutually contradictory, we are of the considered opinion that the CIT(A) has rightly deleted the impugned addition based on the entire rejection of the sundry creditors list involving the sum of Rs.1,89,08,782/- sought to be revived by the Revenue in its sole substantive grievance raised before us.

5. Mr. Shrikanth lastly argued that the assessee had not appeared before the Assessing Officer. We find no reason to accept the Revenue's instant latter argument as well once the Assessing Officer had accepted the assessee's turnover figures as well as profit ratio declared in the regular books of account. Rejected accordingly.

6. This Revenue's appeal is dismissed in above terms.

Order pronounced in the open court on 09.08.2023.

Sd/-
[G.D. PADMAHSHALI]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 09th August, 2023

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Belagavi.
4.	The JCIT, Range-2, Belagavi.
5.	D.R. ITAT, Panaji Bench, Panaji
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,
Pune.